



YAKAMA NATION

PUBLIC LAW 83-280



WASHINGTON STATE RETROCESSION TO UNITED STATES

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RETROCESSION IN BRIEF ...



- Return of jurisdiction from State of Washington to United States government over:
 - Indians
 - On the Yakama Reservation
 - In 5 particular subject matters:
 - ✦ Compulsory School Attendance
 - ✦ Juvenile Delinquency
 - ✦ Domestic Relations
 - ✦ Public Assistance
 - ✦ Operation of Motor Vehicles on Public Roadways
- Did not include entire scope of subject matters for which Yakama Nation petitioned
- Did not include entire geographic area for which Yakama Nation petitioned



RETROCESSION DOES NOT MEAN ...



- Yakama Nation is NOT the only governmental authority on the Yakama Reservation
 - For example, all individuals must obey traffic laws and laws governing the acceptance of public assistance
 - All individuals are subject to detention by law enforcement officers
- Yakama Nation has NOT gained criminal authority over non-Indians
 - Non-Indians who commit crimes against Indians are subject to federal prosecution
 - US Attorney has committed to prosecute those crimes
- Yakama Nation has NOT excluded non-Indians from the Yakama Reservation
- Yakama Reservation is NOT a haven from criminal prosecution
 - Indians and non-Indians alike will be held accountable for their crimes in the appropriate court setting.



PRESENTATION OUTLINE



- Background of Yakama Nation
- Yakama Land Tenure
- Public Law 83-280
- Assertion and Retrocession of Authority by Washington State
- Tasks Moving Forward
- Lessons Learned



YAKAMA NATION HISTORY

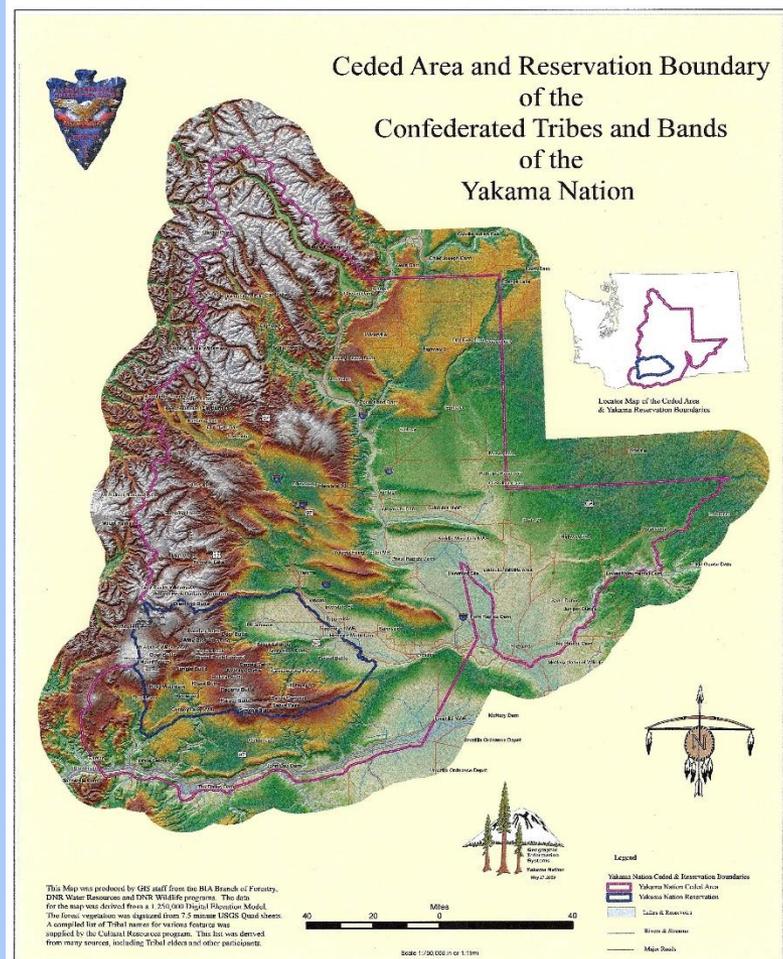
TREATY WITH THE UNITED STATES (12 STAT. 951 (JUNE 9, 1855))



- **Article 1:** Describing bounds of Ceded Area, encompassing approximately one-third of present-day Washington State
- **Article 2:** Describing the area Reserved for the exclusive use and benefit of the Yakama people
- **Article 3:** Describing road-making, and the reserved rights to travel on public roads, take fish, hunt, gather, and pasture livestock
- **Article 4:** Consideration paid for the Article 1 cession
- **Article 5:** Further consideration to include establishing 2 schools, and 1 hospital, and to provide vocational training and professionals in support thereof
- **Article 6:** Providing for allotment of Yakama reserved area
- **Article 7:** “The annuities of the aforesaid confederated tribes and bands shall not be taken to pay the debts of individuals”
- **Article 8:** Acknowledging federal authority, and pledging not to shelter or conceal offenders against federal laws
- **Article 9:** Excluding ardent spirits from the reservation
- **Article 10:** Reserving the Wenatshapam Fishery
- **Article 11:** Treaty is binding upon ratification by the President and Senate



YAKAMA NATION TERRITORY





YAKAMA LAND TENURE



- Yakama Reservation 1.4M acres
 - Erroneous land surveys
 - Corrected by Indian Claims Commission
- Allotment (Article 6)
 - 1894 – 1914
 - 440,000 acres allotted
 - 798,000 acres “surplus” and available for sale and disposition
- “Checkerboard” of Fee Patent and Trust properties owned by individuals (enrolled Yakama members, other Indians, and non-Indians), and governments (Yakama Nation, federal, and state agencies).



PUBLIC LAW 83-280



- **Consent by Federal government for State criminal and civil authority in Indian Country**
 - Termination era law
 - Initiated for the “mandatory states” in 1953, without Tribal consent
 - Washington’s assumption of jurisdiction over Yakama lands was without Yakama consent
 - No option for retrocession from the states to the federal government until Indian Civil Rights Act (1968)
- **PL 83-280 did not terminate Yakama Nation’s inherent sovereign authority**
 - Introduced third sovereign to Yakama Indian Country
 - Created “checkerboard” of jurisdiction overlaying “checkerboard” land tenure



YAKAMA NATION RESPONSE TO WASHINGTON'S ASSUMPTION OF PUBLIC LAW 83-280 JURISDICTION



- Continued assertion of Yakama Nation sovereign authority
- Joined as *amicus* in Washington state suit
 - Washington State Supreme Court (*M. v. State*, 76 Wn.2d 485, 457 P.2d 590 (1969)) found that Washington state assumption of PL-280 jurisdiction:
 - ✦ was not in violation of the state enabling act or state constitution, and
 - ✦ the method of assuming jurisdiction was not in violation of state law, and
 - ✦ RCW 37.12 was not only a partial assumption of jurisdiction
- Brought suit in federal court against implementation of PL-280
 - 9th circuit found RCW implementing PL-280 was unconstitutional
 - US Supreme Court disagreed (*Washington, et al. v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463 (1979))



WASHINGTON STATE (EST. 1889) ASSERTS PL-280 JURISDICTION



Asserting state jurisdiction over all of Indian Country within the state for all purposes, except for Indians on their own Reservations and on Trust lands where it would be “limited” to ...

- Compulsory School Attendance
- Public Assistance
- Domestic Relations
- Mental Illness
- Juvenile Delinquency
- Adoption Proceedings
- Dependent Children
- Operation of motor vehicles upon the public streets, alleys, roads and highways



PUBLIC LAW 83-280



- Yakama Nation assumed exclusive jurisdiction under the Indian Child Welfare Act in two areas:
 - Adoption
 - Dependency
- Six areas remained under State jurisdiction:
 - Compulsory School Attendance
 - Public Assistance
 - Domestic Relations
 - Mental Illness
 - Juvenile Delinquency
 - Operation of motor vehicles upon the public streets, alleys, roads and highways



PUBLIC LAW 83-280



- Retrocession retains Termination Era flavor
 - Again supports State and Federal action outside Tribal decision-making
 - Executive Order 11435 (November 21, 1968) designates Secretary of Interior to act on retrocession request by state, and requires acceptance of criminal jurisdiction be effected only after consultation with the Attorney General



PUBLIC LAW 83-280



- **Retrocession in Washington State – ESHB 2233 (March 19, 2012)**
 - Restricts retrocession of civil commitment of sexually violent predators
- **Yakama Nation submits Retrocession Petition (July 16, 2012)**
 - Retrocession Plan
 - Letters of Support from neighboring jurisdictions
 - Tribal Governance and Collaboration
 - Initially submitting more than 1,200 pages of supporting documentation
- **Expressly petitioned for:**
 - All Yakama Nation Indian Country
 - Civil and Criminal Jurisdiction
 - Five of Six remaining areas



WASHINGTON PROCLAMATION AND FEDERAL ACCEPTANCE



- **Washington State Proclamation by Governor Inslee**
 - Limited geographic scope of retrocession, thereby further complicating jurisdictional scheme
 - # 14-01 (January 17, 2014) – the form prescribed by ESHB 2233
 - Submitted to US Department of Interior for approval (January 27, 2014)
- **US Department of Interior Acceptance of Proclamation**
 - Notification on October 19, 2016 (accepting plain language of Proclamation)
 - Federal Register Notice (October 20, 2015) with effective date (April 19, 2016)



YAKAMA TRIBAL COUNCIL HOSTS WASHINGTON GOVERNOR INSLEE





IMPLEMENTATION - PRIORITY



- Priority ONE – public safety for all people on Yakama lands
 - Special Law Enforcement Commissions
 - Mutual aid memoranda with surrounding jurisdictions
 - Update *Revised Yakama Code* provisions
 - Clarify federal acceptance of Proclamation terms
 - Identify staffing needs to meet implementation
- Outreach and understanding of impacts to all people on Yakama lands



IMPLEMENTATION – LESSONS LEARNED



- Need for increased communication and education with surrounding jurisdictions
- Need for increased communication and education of Yakama Reservation residents
- Jurisdictional complexity was increased by language of the Proclamation